

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
PUBLIC HEALTH SERVICE  
INDIAN HEALTH SERVICE

Refer to: EEO

ALBUQUERQUE AREA INDIAN HEALTH SERVICE CIRCULAR NO. 2003-10

**PREVENTION OF WORKPLACE HARRASSMENT**

Sec.

1. Purpose
2. Background
3. Policy
4. Applicability
5. Authority
6. Definitions
7. Types of Harassment
8. Responsibilities
9. Procedures
10. Consequences
11. Effective Date

1. **PURPOSE.** The purpose of this circular is to establish a “zero-tolerance” policy for workplace harassment based on race, sex, color, national origin, religion, age (over 40), persons with a disability, and sexual orientation within the Albuquerque Area Indian Health Service (hereinafter AAIHS). The AAIHS is committed to establishing and maintaining a work environment free from harassment that is based on an employee or applicant’s race, sex (including sexual harassment), color, national origin, religion, person with disability, age (over 40), or sexual orientation.
2. **BACKGROUND.** In June of 1998, the United States Supreme Court issued two landmark decisions concerning employer liability in claims of harassment (not limited to sexual harassment) in the workplace based on race, sex, color, national origin, religion, age, or disability. These presedent-setting decisions underscored the importance of a strong, widely disseminated and consistently enforced policy against harassment based on one of the mentioned protected basis.

The subtitle of this policy could read, “Warning! Harassment May Be Hazardous to Your Career,” and has an instructive double meaning. First, and most obviously, harassment can be hazardous to the career of the harasser, who may be subject to discipline up to and including removal. Secondly, and more subtly, harassment can be hazardous to the very lives of the victims and their co-workers. This becomes evident in declining job performance, increased leave usage, lower morale, lost productivity and separation (i.e. early retirement and/or resignation).

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Distribution: All Albuquerque Area Indian Health Service Employees  
Date: December 17, 2003

3. **POLICY.** It shall be the policy of the AAIHS not to tolerate workplace harassment in any form, thereby establishing a “zero tolerance” policy for harassment of any individual (i.e. employee, patient, visitor, contractor, or any other person) working or visiting or having other business on IHS property, because of race, sex (including sexual harassment), color, national origin, age (over 40), or because the person has a disability, or because of their sexual orientation.

The AAIHS will not tolerate or condone reprisal/retaliation against employees or others who report harassment. Those individuals (including witnesses) who report or participate, in the processing of this policy are protected from reprisal by the same law that protects the victim. If an individual reports harassment-either as a victim or an observer and informs management, and believes they have suffered reprisal for making the report they should contact their immediate supervisor immediately.

4. **APPLICABILITY.** This policy applies to all Civil Service employees, Commissioned Corps officers, applicants, contractors, patients and their family members, visitors and members of the general public with whom the AAIHS conducts business or provides services.
5. **AUTHORITY.** 29 Code of Federal Regulations (CFR) 1614, 29 CFR 1604.11 EEOC Management Directive 715, Executive Order 13087, Department of Health and Human Services Standards of Conduct 73.735-306 and Supreme Court Decisions *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 765, 118 S. Ct. 2257 (1998) *Faragher v. City of Boca Raton*, 524 U.S. 775, 118 S. Ct. 2275 (1998), HHS General Administration Manual, Chapter 5-10.
6. **DEFINITIONS.**

**Employee.** An individual who works or provides services at an IHS facility is considered an "employee" for the purposes of this policy. Employees may encounter the issue of harassment from three different perspectives: victim, observer and harasser. The responsibilities in each instance are different.

**Harasser.** An employee who engages in workplace harassment i.e.( racial jokes, sexual innuendoes, touchy feely actions, or statements about a persons color are inappropriate, they must stop such conduct immediately. An employee’s “intent” ( “I was just joking...” ) is not a mitigating factor in most cases. The manner in which the receiving employee perceives the action, statement, etc., is the guiding factor. Utilize available resources such as the Employee Assistance Program, family, therapy, counseling, etc. to cope with incidents of workplace stressors, which can include harassment.

**Harassment.** Misconduct related to illegal harassment. However, all misconduct is not “illegal harassment”. Management must ensure that even if the misconduct is

not illegal harassment, the misconduct is properly dealt with. An example would be that a co-worker states, "What are you white people doing here, this is an Indian Hospital?" If the employee who overhears the statement informs the person that they found that statement inappropriate and did not like hearing those types of statements, and the co-worker does not make those statements again, then this is not harassment. However, it is inappropriate conduct and the supervisor must take appropriate corrective action. Conduct becomes illegal harassment when co-worker continues such inappropriate remarks, management is aware or should have been aware the co-worker is making the statements and failed to make corrective action.

**Observer.** An employee who witnesses misconduct/harassment. All employees have a part to play in preventing harassment. If an employee observes harassing behavior in the workplace and does nothing about it, the employee is contributing to the problem. A harasser who is not stopped may intensify the harassment or extend the behavior to others.

If an employee observes a co-worker being harassed, what action can the employee take to stop it? Depending on the nature of the behavior, the employee's relationship with the harasser and the victim, the employee may be able to help the victim by speaking to the victim; encourage the victim to report the harassment and offer support as a witness if necessary; or report the behavior to a supervisor or manager who can take corrective action.

**Victim.** An individual who believes him/herself to be the target or "victim" of workplace harassment. The "victim" is to advise the harasser very clearly and directly that the conduct is offensive, unwelcomed and unacceptable. The victim may say things like: "Please don't touch me. It makes me uncomfortable and I don't like it." "I don't think jokes like that are funny. Please don't tell them when I'm in the room." "I'd like it much better if you'd comment on my performance rather than my appearance." "I don't consider comments like that to be compliments. I'd appreciate it if you didn't say things like that to me again." "I don't believe statements about somebody's race, or national origin, is funny, and please do not make such statements again." Sometimes this will be all that is necessary. If the offensive conduct continues after the victim has made his/her feelings clear, they should put their concerns in writing and keep a copy. Depending on the nature of the conduct, "victim" should consider reporting the incident(s) to their supervisor, Chief Executive Officer (CEO) or Executive Officer. If the supervisor is the alleged harasser, the "victim" should report the conduct to his/her management. Employees should be reminded that if they don't report incidents, management and/or the Agency cannot take action on their behalf. All employees must be aware of the seriousness of making false accusations or claims of sexual harassment or harassment. Making false accusations, vicious or malicious statements which slander or defames another IHS employee is illegal. Employees should report instances of legitimate harassment, but never use harassment accusations as a way to punish or "get back at" another individual.

## 7. **TYPES OF HARASSMENT.**

- A. ***Sexual Harassment.*** Sexual harassment is defined in law and regulation as unwelcomed sexual advances, such as requests for sexual favors, and other verbal or physical conduct of a sexual nature. An individual who perceives they are being sexually harassed by supervisors, co-workers, applicants, peers, patients, patient family members, visitors, or contractors should make it clear to the perceived harasser, that such behavior is offensive.
1. ***Quid-Pro-Quo Sexual Harassment.*** Is defined as unwelcomed sexual advance, request for sexual favors, or other verbal or physical conduct of a sexual nature. Supervisors or individuals in other positions of authority are usually the “harasser” in Quid-Pro-Quo sexual harassment. Supervisory harassment of a sexual nature interferes with an employee’s work performance or creates an intimidating, hostile, or offensive work environment. Examples: Any manager or supervisor (including individuals in leader and/or Foreman positions) or other employees who have input in performance or work assignments, including those individuals who are in an “acting” position and who use implicit or explicit coercive sexual behavior to control, influence, or affect the career, salary, or job of an employee or applicant is engaging in sexual harassment.
  2. ***Hostile Environment Sexual Harassment.*** Is deliberate, unwelcomed, or repeated offensive comments, gestures, and/or physical contact of a sexual nature that is imposed on individuals in the workplace or work environment and may be perpetrated by any employee. This type of conduct is inappropriate and is known as “creating a hostile, offensive or intimidating hostile work environment.” This type of misconduct may be considered “severe or egregious.” An example of severe or egregious behavior is touching, groping, or having physical contact that is sexual in nature. This occurs because the harasser, by his/her unwelcomed sexual conduct, creates a situation so uncomfortable (i.e., intimidating, hostile or offensive) for the victim that the victim's work performance and/or mental well being are adversely affected. Individuals or groups of co-workers or managers, or non-employees can create a hostile environment. Other examples are use of obscene word(s) or language; requesting dates from employees or applicants, telling off color jokes; posters, displaying pictures of nude or nearly nude individuals or pictures of suggestive poses; displaying or distributing writings or clippings from periodicals that contain such pictures or words.

The Equal Employment Opportunity Commission (EEOC) and courts have

found the following examples create a sexually harassing hostile working environment:

1. Sexually offensive physical gestures or body movements.
2. Sexually offensive facial expressions, winking, blowing kisses, or licking lips.
3. Sexually suggestive leering, staring, or looking someone up and down.
4. Unwelcomed deliberate touching, leaning over, cornering or pinching.
5. Sexual slurs and jokes.
6. Displays of sexually suggestive or explicit male or female pictures on calendars or posters.
7. Harassing telephone calls at home or work.
8. Sexually suggestive sounds such as kissing sounds, howling or smacking lips.
9. Sexually suggestive or explicit comments.
10. Sending or soliciting sexually suggestive or abusive electronic mail messages e-mail).
11. Displaying sexually suggestive or explicit cartoons or pictures (including nude or partially nude males or females) on workplace computer screens.

B. ***Non-Sexual Harassment.*** Is harassment based on someone's race, sex (not sexual harassment but harassment based on gender), color, national origin, religion, age (over 40), disability, or sexual orientation. Non-sexual harassment maybe pervasive (occurs over a period of time), or may be one incident that is of an egregious or severe nature. Misconduct or inappropriate comments and/or statements must not be allowed to continue. Doing so places management and supervisors in a position of having condoned the misconduct. The US. District Courts (in hereafter "the courts") HHS, EEOC, HHS, EEOC, and IHS will determine if the discriminatory harassment was severe or pervasive and/or egregious or severe nature.

Examples of conduct that the courts, EEOC, HHS and/or IHS have found that create a offensive, intimidating or hostile working environment include:

1. Constantly referring to another employee by a name that is racially disparaging or can be defined as a “racial slur”. Example:; making unwanted or unsolicited statements about another person race i.e.” “All of you [race] are alcoholics”, or “You [race] people should not be here, because this is an Indian hospital”.
2. Making unwanted or unsolicited statements about another person’s tribal affiliation, when such statements are offensive. Example: “You [tribal affiliation] need to go back to your own hospital or reservation because you are using my Tribe’s money for your services.”
3. Making unwanted or unsolicited statements about another person’s color. Example: “What are all those white people doing here?”
4. Making unwanted or unsolicited statements about a person’s gender. Example: “Women should stay at home and raise children.” “Men do not make good registered nurses.”
5. Making unwanted or unsolicited statements about religion. Example: “All Jews should go back to Israel.” “Religion of the Native American Church is not really a religion.” “People who practice witchcraft will burn in hell.”
6. Making unwanted or unsolicited statements about a person’s age (over 40 only). Example: “You are getting so old that you need to retire.” “You’re too old to cut the mustard.” “What we need around here is new young blood.”
7. Making unwanted or unsolicited statements about another person’s disability (or perception of their disability). Example: Calling a disabled person a “gimp”, or “dummy” because of their disability.
8. Making unwanted or unsolicited statements about another person’s sexual orientation. Example: Calling someone who has a different sexual orientation or your perception of thereof; a “queer”, “butch”, “faggot”, etc.

8. **RESPONSIBILITIES.**

A. **AREA DIRECTOR.**

- (1) Ensures a work environment free from harassment due to race, sex, color,

national origin, religion, age (over 40), disability or sexual orientation at all levels within the organizational structure of the AAIHS.

- (2) Hold accountable Area managers and supervisors for assuring compliance with this policy and takes make appropriate corrective actions as required.
- (3) Designates an individual to conduct an impartial and comprehensive inquiry or investigation. Ensures CEOs cooperate with the fact-finder/investigator when the investigation is being conducted.
- (4) Ensures employees who report incidents of workplace harassment are protected from any form of reprisal.
- (5) Immediately informs the Area EEO Coordinator of any allegation of reprisal to obtain proper procedures.

B. EXECUTIVE OFFICER.

- (1) Supports the Area Director to assure compliance with this policy in day to day interactions.
- (2) Is familiar with applicable Federal regulations, HHS, IHS and AAIHS policies that pertain to the elimination and prevention of harassment in the workplace.
- (3) Assures annual and as needed training on prevention of workplace harassment.

C. AREA EEO COORDINATOR.

- (1). Ensure that a person is assigned to conduct the inquiry or investigation properly investigates harassment allegations. Upon proper consultation with the Regional EEO manager. The EEO Coordinator, consults with the Area Director to determine if the service unit will conduct the investigation, or if another employee or office should conduct the investigation.
- (2). Upon review of the final report of investigation, or inquiry, the EEO Coordinator will determine, after consultation with the Regional EEO Manager, and HR staff, whether or not the conduct was inappropriate. The EEO Coordinator will advise the Area Director, and the Executive Officer of those findings. After discussing with the above management officials, the EEO Coordinator will then discuss an appropriate corrective or

disciplinary action with the Regional EEO Manager, and HR staff, if required.

D. CHIEF EXECUTIVE OFFICERS (CEO), HEALTH CENTER DIRECTORS, AREA DIVISION DIRECTORS AND SECOND LINE SUPERVISORS.

1. The Chief Executive Officers/Health Center Directors, Area Division Directors and Second Line Supervisors are responsible and accountable for a workplace environment that is free from all forms of harassment at all levels of the organization under their direction and supervision. They are also responsible for immediately notifying the Executive Officer or Area EEO Coordinator, or Regional EEO Manager, or the HR Office (ER/LR) of the allegations. Immediately means reporting the allegations **within 24 hours of becoming aware of the issue or** being informed of the harassment allegation. Notification may be by email, telephone or in person.
2. The CEO holds service unit managers and supervisors accountable for taking corrective action when it is discovered harassment or other unacceptable conduct has occurred within their respective jurisdictions.
3. CEOs, health center directors, area office division directors and second line supervisors must lead by example and set the tone for their subordinates. Managers and supervisors must be aware of their personal actions and what they say and do as well as guide the behavior of subordinate staff. In addition, managers are required to model proper conduct.
4. Ensures that all managers and supervisors of the service unit, health center or Area Office division provide a copy of this policy to all employees, contractors, or volunteers who work within their organization. Assures access to this policy upon request.
5. Ensures each manager and supervisor subordinate to them complies with this policy and participates in management inquiries or investigations.
6. Ensures report of findings is completed within five (5) workdays after management first became aware of the allegation and assigned an investigation.
7. Ensures immediate supervisors consult with appropriate management officials including HR and EEO staff, to assure appropriate corrective/disciplinary action is initiated. Follows up with subordinate supervisors to ascertain whether corrective action is being initiated.



However, the type of corrective action must not be discussed or agreed upon, particularly if the higher level manager will serve as a deciding official.

8. Ensures employees know their right to request EEO counseling during the same time that management is conducting an inquiry or investigation. EEO counselors are not to be assigned to conduct management's administrative investigation or inquiry. Management is responsible for conducting an administrative inquiry or investigation.

E. 1<sup>ST</sup> LINE SUPERVISORS.

- (1) Ensures the AAIHS policy for zero-tolerance of workplace harassment is communicated to all employees, contractors, and volunteers. Ensures annual reminders are issued and properly documented annually. Informs staff that a complaint or harassment allegations do not have to be presented in writing. An employee only has to inform any supervisor verbally of the allegation. Advise persons making allegations of their right to request EEO counseling within 45 days of the date the incident occurred. Document the time, and specifics of the allegation including all information provided by the person making the allegation.
- (2) Ensures proper notification to higher level management when an individual employee brings an allegations of harassment.
- (3) Supports the AAIHS policy for zero-tolerance of workplace harassment by conducting immediate inquiry or fact finding as assigned by higher level management. The supervisor may request assistance from HR staff, Area or Regional EEO Office prior to conducting the investigation.
- (4) Ensures timely and appropriate corrective and or disciplinary action is taken when the inquiry or investigation shows that misconduct occurred.
- (5) Seeks alternative assignment for the alleged harasser, pending the outcome of the administrative investigation. It is the policy of this area that the individual reporting the harassment shall not be placed in an alternative assignment, unless the record clearly shows the reporting party voluntarily requested the alternative assignment. Ensures that the reporting party is not harassed, subjected to reprisal, or bothered by the alleged harasser or other employees.
- (6) Ensures familiarity with applicable Federal regulations, HHS, IHS and AAIHS policies that pertain to the elimination of harassment in the workplace.

(7) Takes seriously all allegations of workplace harassment and handles in accordance with this policy.

(8) Leads by example and set, the tone for all staff.

F. EMPLOYEES.

(1) Ensure their actions do not create a harmful workplace environment, avoid actual, or appearance of harassing conduct.

(2) Cooperate with persons who are conducting inquiry(s) into alleged workplace harassment. Understand that failure to cooperate may result in appropriate action, including removal.

(3) Answer truthfully, even though they are not under oath or affirmation. Understand that failure to do so could subject the employee to corrective action.

9. **PROCEDURES FOR ALLEGING HARASSMENT CLAIMS.**

(1) Employee informs the supervisor, or other next in line management official.

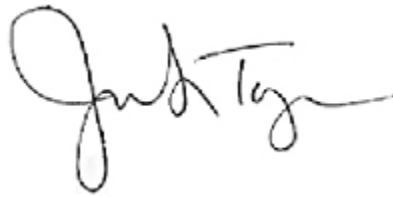
(2) Specific information regarding who is being harassed, dates the alleged harassment occurred, the name of employee engaging in the alleged harassment and the description of what occurred must be reported. The employee reporting the harassment does not have to provide their name at this time, they may remain anonymous. When the inquiry or investigation occurs, the employee may be interviewed, and the right to confidentiality or to remain anonymous, ends.

(3) The employee who believes they are being harassed may request EEO counseling. The employee must request a counselor within 45 days of the date the alleged harassment occurred. The employee may request counseling and at the same time, may inform management of the alleged harassment. If counseling is requested, the EEO counselor MUST immediately inform the Area EEO Coordinator is available or the Regional EEO Manager.

(4) The employee must allege the harassment or hostile work environment is because of their race, sex, color, national origin, religion, age (over 40), disability, or sexual orientation. Claims of harassment not based on one of the protected basis mentioned above are not within the purview of this

policy. Harassment because of participation in the union grievance process is not covered by this policy but the negotiated bargaining agreement.

10. **CONSEQUENCES OF ILLEGAL HARRASSMENT.** Any AAIHS employee, contractor, patient, visitor, volunteer, supervisor, or manager who conducts themselves in an inappropriate manner or commits such acts of harassment or creates a hostile work environment, based of the protected basis, shall be subject to appropriate corrective and or disciplinary action, up to and including removal from the Federal service, or if a patient or visitor, may be excluded from medical services.
11. **EFFECTIVE DATE.** This policy is effective upon date of signature and shall remain in effect until canceled or superceded.

A handwritten signature in black ink, appearing to read 'James L. Toya', with a large, stylized initial 'J'.

12/17/02 by AD

James L. Toya, M.P.H.  
Director, Albuquerque Area Indian Health Service